

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 11-0390
George H. Mackey)	
)	
Petitioner)	Decision and Order

1. George H. Mackey, the Petitioner ("Petitioner Mackey"), represents himself (appears *pro se*) and participated in the hearing by telephone held on October 5, 2011.
2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent ("USDA Rural Development") and is represented by Mary E. Kimball. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
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Summary of the Facts Presented

3. USDA Rural Development's Exhibits, plus Narrative, Witness & Exhibit List, were filed on September 19, 2010, and are admitted into evidence, together with the testimony of Ms. Kimball.
4. Petitioner Mackey's "Consumer Debtor Financial Statement" was filed on October 4, 2011, and is admitted into evidence, together with the testimony of Petitioner Mackey.
5. Petitioner Mackey owes to USDA Rural Development **\$35,083.90** (as of September 14, 2011) in repayment of two Rural Housing Service loans, one assumed in 1996, and the

other made in 1996, for a home in Georgia, the balance of which is now unsecured (“the debt”). *See* USDA Rural Development Exhibits, esp. RX 6.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$35,083.90** would increase the current balance by \$9,823.49, to \$44,907.39. *See* USDA Rural Development Exhibits, esp. RX 7 (both pages).

7. The amount borrowed from USDA Rural Development was \$40,320.00 in 1996 (\$29,790.00 on the assumed loan, plus \$10,530.00). RX 1, RX 2, RX 3. By the time of the short sale in 2003, that debt had grown to \$50,583.43.¹ From the sale of the home, \$15,350.00 was applied to the debt, reducing the balance to \$35,233.43. An escrow adjustment (\$149.53) reduced the balance to **\$35,083.90**, as of January 14, 2003. RX 6. No interest has accrued since January 14, 2003, and no collections have been applied to that balance since January 14, 2003, except that there may be recent Treasury garnishments that had not yet reached USDA Rural Development.

8. Petitioner Mackey reported that his pay is being garnished to reduce the debt. [His Hearing Request was late.] Petitioner Mackey said that the bookkeeper told him 25% of his pay is coming out (which may include the child support he has deducted to go to his 13 year-old, who is not in his home). Petitioner Mackey reported that he needs the garnishment lowered; he supports his wife and 3 year-old at home, in addition to the 13 year-old, and they are living pay check to pay check. Petitioner Mackey reported that he owes back income taxes for 2010, nearly \$2,000.00 (for which he is paying \$120.00 per month).

9. Petitioner Mackey makes good money as a welder, and his disposable income is entirely consumed with reasonable and necessary living expenses (*see* “Consumer Debtor Financial Statement”) for his children, his wife and himself. [Disposable income is gross pay, minus withholding for such items as income tax, Social Security, Medicare, health insurance, and the like.] Petitioner Mackey’s wife is not obligated to repay the debt. Although garnishment at 15% of Petitioner Mackey’s disposable pay would yield considerable repayment of the debt, Petitioner Mackey cannot currently withstand garnishment for the debt in any amount without hardship. To prevent hardship, potential garnishment to repay the debt must be limited to **0%** of Petitioner Mackey’s disposable pay through October 2013; then **up to 3%** of Petitioner Mackey’s disposable pay beginning November 2013 through October 2015; then **up to 15%** of Petitioner Mackey’s disposable pay thereafter. 31 C.F.R. § 285.11.

¹ In both 1998 and 2000, Petitioner Mackey reamortized his accounts; the amounts delinquent on the accounts were added to principal, making his accounts current. These amortizations did not change the amounts owed and were of benefit to Petitioner Mackey. *See* Narrative.

10. Petitioner Mackey is responsible and willing and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

11. Through October 2013, no garnishment is authorized. Beginning November 2013 through October 2015, garnishment up to 3% of Petitioner Mackey's disposable pay is authorized; and thereafter, garnishment up to 15% of Petitioner Mackey's disposable pay is authorized. *See* paragraph 9. **Petitioner Mackey, you may choose to contact Treasury's collection agency to negotiate** the repayment of the debt. Petitioner Mackey, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. You may choose to offer to Treasury's collection agency to compromise the debt for an amount you are able to pay, to settle the claim for less.

Findings, Analysis and Conclusions

12. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Mackey and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

13. Petitioner Mackey owes the debt described in paragraphs 5, 6 and 7.

14. **Garnishment is authorized**, as follows: through October 2013, **no** garnishment. Beginning November 2013 through October 2015, garnishment **up to 3%** of Petitioner Mackey's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Mackey's disposable pay. 31 C.F.R. § 285.11. I am NOT, however, ordering any amounts that may have already been collected through garnishment of Petitioner Mackey's pay prior to implementation of this Decision to be returned to Petitioner Mackey.

15. Repayment of the debt may also occur through **offset** of Petitioner Mackey's **income tax refunds** or other **Federal monies** payable to the order of Mr. Mackey.

Order

16. Until the debt is repaid, Petitioner Mackey shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in his mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

17. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through October 2013. Beginning November 2013 through

October 2015, garnishment up to 3% of Petitioner Mackey's disposable pay is authorized; and garnishment up to 15% of Petitioner Mackey's disposable pay thereafter. 31 C.F.R. § 285.11.

18. USDA Rural Development, and those collecting on its behalf, may already be garnishing Petitioner Mackey's pay; but currently, garnishment in any amount results in **financial hardship** to Petitioner Mackey and is NOT authorized. 31 C.F.R. § 285.11. USDA Rural Development, and those collecting on its behalf, will NOT be required to return to Petitioner Mackey any amounts already collected through garnishment of Petitioner Mackey's pay, prior to implementation of this Decision.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 11th day of October 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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